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SENATE BILL 1484 By
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HOUSE BILL 864
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AN ACT to provide for the levy of additional sales tax on interstate telecommunications services sold to businesses; to amend Tennessee Code Annotated, Section 67-4-2009, relative to provide for the pass-through to customers of certain savings through reduction in rates for telecommunications services; to provide a sales tax exemption for certain telecommunications equipment; to provide for effective dates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It is the finding of the general assembly that one measure of the state's economic competitiveness is the presence of an efficient and affordable telecommunications infrastructure using the latest technological advancements. The general assembly further finds that the telecommunications industry is undergoing a dramatic change that is altering the identify of its participants, the nature of services that the industry provides, and the methods used to deliver those services. The general assembly finds that the telecommunications industry is becoming increasingly competitive, that the distinctions among the providers of the various types of telecommunications services have become blurred, and that full and fair competition within the telecommunications industry is beneficial to all residents and businesses of Tennessee. Further, it is a finding of the general assembly that the Tennessee property tax laws now place certain telephone companies at a competitive disadvantage because their

properties are classified as “public utility property” and assessed at the ratio of fifty-five percent (55%) of such properties’ fair market values while the properties of other businesses, including those of certain of their competitors, are classified as “industrial and commercial property” and assessed at lower ratios of such properties’ fair market values. Accordingly, the general assembly finds that, in order to mitigate the effects of such competitive disadvantage, telephone companies whose properties are classified as “public utility property” should be entitled to a credit against their franchise and excise taxes in an amount equal to their ad valorem property tax attributable to the higher assessment ratio applicable to public utility property. The general assembly further finds, however, that it is in the best interests of the state and its political subdivisions that the revenues available to the state not be diminished by the franchise and excise tax credits allowed to certain telephone companies; and that an increase in the sales tax imposed on interstate telecommunications services is expected to provide to the State revenues approximately equal to the franchise and excise tax credits allowed to certain telephone companies. Furthermore, the general assembly finds that its in the best interests of Tennessee consumers of telecommunications services that any net tax saving experienced by such telephone companies be passed on to consumers in the form of reductions in the prices charged for the services provided by such telephone companies. Accordingly, the general assembly finds that there is a compelling need to effect these changes in the tax system of the state in order to avoid placing certain telecommunications services providers at a competitive disadvantage, to provide purchasers of telecommunications services with greater choices and lower prices, and to preserve the revenue base of the existing property tax system for the political subdivisions of the state.

SECTION 2. Tennessee Code Annotated, Section 67-6-221, is amended to read as follows:

67-6-221. Interstate telecommunications services.

(a) Notwithstanding any other provision of the law to the contrary, interstate telecommunication services sold to businesses shall be subject to a tax imposed at the rate of six percent (6%).

(b) The revenue from a rate equal to one-half percent (0.5%) of tax shall be deposited in the general fund and earmarked for education purposes for kindergarten through grade twelve (K-12) in accordance with Section 67-6-103(c)(2). The revenue from a rate equal to one-half percent (0.5%) of tax shall be distributed to incorporated municipalities in the proportion each population bears to the aggregate population of the state and to unincorporated areas of counties in the proportion each population bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to Section 67-6-712. The revenue from a rate equal to two and one-half percent (2.5%) of tax shall be deposited in the telecommunications ad valorem tax reduction fund created by Section 5 of this act. All other revenue generated from the tax imposed by subsection (a) shall be deposited in the state general fund and allocated pursuant to Section 67-6-103(a).

SECTION 3. Tennessee Code Annotated, Section 67-4-2009, is amended by adding at the end thereof a new subsection (10) to read as follows:

(10)

(A) Pursuant to the rules of this subsection, every person providing telecommunications services subject to tax under Chapter 6 of this title shall be allowed as a credit against the sum total of the taxes imposed by the franchise tax law, compiled in Title 67, Chapter 4, Part 21, and by the excise tax law, compiled in Title 67, Chapter 4, Part 20, an

amount equal to the sum of (i) 27.27% of the aggregate ad valorem taxes paid to political subdivisions of this state relating to property assessed with a lien date on or after January 1, 2002, with respect to such person's public utility property, as defined in §67-5-501(8)(B), which is real property; and (ii) 45.45% of the aggregate ad valorem taxes paid to political subdivisions of this state relating to property assessed with a lien date on or after January 1, 2002, with respect to such person's public utility property, as defined in §67-5-501(8)(B), which is personal property.

(B) The credit allowed under this subsection shall be applied against any Tennessee franchise and excise taxes shown on a return filed by such person for taxable years ending on or after December 31, 2002.

(C) The excess, if any, of the credit allowed by this subsection over the aggregate franchise and excise tax liability of a person against which such allowable credit may be applied, as provided in this subsection, shall be deemed to be for which the taxpayer shall be entitled to a refund under §67-1-1802. Any such refund, together with interest thereon, must be paid by the commissioner within ninety (90) days of receipt by the commissioner of the return on which the credit allowed by this section is claimed. Failure of the commissioner to pay such refund within such ninety (90) day period, in whole or in part, shall entitle the aggrieved taxpayer to proceed with the remedies provided in §67-1-1802.

(D) To the extent that the amount contained in the telecommunications ad valorem tax reduction fund does not equal or exceed the total amount of credits or refunds as allowed by §67-4-2009(10), such credits and refunds shall be proportionately reduced by

the amount of the shortfall; provided, however, that any such reductions shall be carried forward to any succeeding year. The commissioner shall determine the amount of any reductions required pursuant to this subsection.

(E) With respect to any person or entity not required to file a return, including, but not limited to, telephone cooperatives, the credit allowed under this subsection shall be deemed to be a payment of tax in excess of the taxpayer's actual liability governed by the provisions of paragraph (C) of this subsection. Any such person shall notify the commissioner in writing of the amount of the credit claimed and, for purposes of paragraph (C) of this subsection, the date of receipt by the commissioner of such notice shall be deemed to be the date of receipt by the commissioner of the return on which the credit allowed by this subsection is claimed.

SECTION 4. Tennessee Code Annotated, Section 67-6-102(13), is amended by adding at the end thereof a new paragraph (J) to read as follows:

(J) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair, parts and any necessary repair or taxable installation labor therefor, which is (i) necessary to, and primarily for, the receiving, initiating, amplifying, processing, transmitting, retranslating, switching or monitoring of switching of telecommunications services for sale or internet access services for sale or any combination thereof, including, but not limited to, such machinery, apparatus and equipment used or consumed to upgrade systems to allow for the receiving, initiating, amplifying, processing, transmitting, retranslating, switching or monitoring of switching of

telecommunications services for sale or internet access services for sale or any combination thereof; and (ii) used by a person legally permitted to provide interstate telecommunications services to customers in this state.

SECTION 5. There is hereby created in the state treasury a special fund to be known as the telecommunications ad valorem tax reduction fund. The monies in the fund shall be used solely and exclusively for the purpose of providing funds to pay the credits or refunds allowed by Section 67-4-2009(10). Annually, monies shall be transferred to the state general fund in the amount equal to the total credits taken and refunds issued pursuant to Section 67-4-2009(10). The monies in the fund shall be invested in the same manner as the monies in the state general fund. Interest earned on investment of monies in the fund shall be deposited in and credited to the fund. Unexpended monies in the fund at the close of each fiscal year shall remain in the fund.

SECTION 6. To the extent that a person engaged in the business of providing telecommunications services subject to tax under Chapter 6 of this title experiences a net tax savings solely as a result of the amendment to Tennessee Code Annotated, Section 67-4-2009, enacted by Section 3 of this act, such net tax savings shall inure to the benefit of the customers of such person through a reduction in the price of telecommunications services provided by such person. For purposes of this section, "net tax savings" shall take into account and be reduced by any reduction in a company's share of the NECA settlement pool resulting from the provisions of this act.

SECTION 7. The provisions of this act are deemed not to be severable. Therefore, if the amendment to Tennessee Code Annotated, Section 67-4-2009, enacted by Section 3 of this act, is repealed, declared invalid or otherwise become inoperable, all other provisions of this act, shall by operation of law immediately become inapplicable inoperable and of no effect.

SECTION 8. The provisions of Section 2 of this act shall be effective with bills submitted by telecommunications service providers to their customers which are dated on or after January

1, 2002. Sections 3, 4, 5, and 6 of this act shall be effective on January 1, 2002. The remaining provisions of this act shall take effect upon becoming a law, the public welfare requiring it.